

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re:	)	
	)	
THE EDUCATION RESOURCES INSTITUTE, INC.,	) )	Chapter 11
Debtor.	)	Case No. 08-12540 (HJB)
	)	
THE FIRST MARBLEHEAD CORPORATION, FIRST MARBLEHEAD EDUCATION RESOURCES, INC., and FIRST MARBLEHEAD DATA SERVICES, INC.,	) ) ) ) )	
Appellants,	)	Civil Action No. 11-10241 (DPW)
v.	) )	
THE EDUCATION RESOURCES INSTITUTE, INC.,	) )	
Appellee,	)	
	)	

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF ITEMS TO BE  
INCLUDED IN THE RECORD ON APPEAL TO THE FIRST CIRCUIT**

The First Marblehead Corporation ("FMC"), First Marblehead Education Resources, Inc. ("FMER") and First Marblehead Data Services, Inc. (collectively with FMC and FMER, the "Appellants") hereby submit this Statement of Issues and Designation of Record On Appeal with respect to their appeal of the final order of the United States District Court for the District of Massachusetts (Woodlock, J.), dated December 9, 2011.

**STATEMENT OF ISSUES**

1. Whether a bankruptcy court order, authorizing a debtor to enter into an agreement under Section 363 of the Bankruptcy Code, provides subject-matter jurisdiction in the bankruptcy court, following confirmation of the debtor's chapter 11 plan of reorganization, to hear a dispute arising under that agreement.

2. Assuming that it had subject-matter jurisdiction over the contract dispute, whether the bankruptcy court erred in construing the agreement in favor of Appellees without providing Appellants an opportunity to develop a factual record.

**DESIGNATION OF RECORD ON APPEAL**

***In re Education Resources Institute, Inc.***  
**Case No. 08-12540 (HJB) (Bankr. D. Mass)**

1. Affidavit of Willis J. Hullings III In Support of First Day Motions. (Docket No. 2).<sup>1</sup>

2. Assented To Motion of Debtor The Education Resources Institute, Inc., For Order Authorizing Debtor To Reject and Terminate Certain Executory Contracts and For Order Approving Settlement Under Fed.R.Bankr.P. 9019 of Claims and Disputes Over the Consequences Thereof. (Docket No. 204).

3. Motion of Debtor For Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement. (Docket No. 238).

4. Motion For Order Pursuant To Section 105, 362, and 363 Of The Bankruptcy Code Authorizing Debtor To Honor Certain Of Its Guaranty Obligations And Purchase Defaulted Loans Using Cash In Certain Pledged Accounts Established For The Benefit Of The Trusts (Docket No. 239).

5. Notice of Nonevidentiary Hearing on Motion of Debtor for Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement; and Motion of Debtor for Order Pursuant to Sections 105, 362, and 363 of the Bankruptcy Code Authorizing Debtor to

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<sup>1</sup> The designation of a pleading includes all exhibits and other papers attached to such pleadings.

Honor Certain of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established for the Benefit of the Trusts. (Docket No. 242).

6. Notice of Filing By Debtor Of Transition Agreement (Constituting Exhibit A To Proposed Order Affixed To Assented To Motion Of Debtor The Education Resources Institute, Inc., For Order Authorizing Debtor To Reject And Terminate Certain Executory Contracts And For Order Approving Settlement Under Fed.R.Bank.P. 9019 Of Claims And Disputes Over The Consequences Thereof). (Docket No. 253).

7. Notice of Rescheduled Nonevidentiary Hearing on Motion filed by Debtor The Education Resources Institute, Inc. for Order Authorizing Debtor to Enter Into Stipulation for the Termination of Certain of the Debtor's Student Loan Programs and Settlement of Certain Claims Relating Thereto. (Docket No. 261).

8. Notice of Rescheduled Nonevidentiary Hearing on Motion of Debtor for Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Authorizing the Debtor to Enter into a Transition Services Agreement; and Motion of Debtor for Order Pursuant to Sections 105, 362, and 363 of the Bankruptcy Code Authorizing Debtor to Honor Certain of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established for the Benefit of the Trusts (Docket No. 294).

9. Affidavit of Willis J. Hulings III in Support of Motion of Debtor for Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with The First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement. (Docket No. 320).

10. Emergency Motion of Official Committee Of Unsecured Creditors To Extend Objection Deadline To Debtor's Motion For Order Pursuant To Sections 105, 362, and 363 Of The Bankruptcy Code Authorizing Debtor To Honor Certain Of Its Guaranty Obligations And

Purchase Defaulted Loans Using Cash In Certain Pledged Accounts Established For The Benefit Of The Trusts. (Docket No. 339).

11. United States Trustee's Omnibus Objection to Segregation, Guaranty, Chase and FMC Motions (with Certificate of Service). (Docket No. 348).

12. Proceeding Memorandum/Order of Bankruptcy Court dated June 20, 2008 Granting the Expedited Motion with Certificate of Service filed by Interested Party United States Trustee For Authorization to File Late Objection to Motion filed by Debtor The Education Resources Institute, Inc., for Order Authorizing Debtor to Segregate. (Docket No. 352).

13. Order Pursuant To Section 105, 362, and 363 of The Bankruptcy Code Authorizing and Directing Debtor To Honor Certain Of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established For The Benefit of The Trusts. (Docket No. 361).

14. Proceeding Memorandum/Order of Bankruptcy Court dated June 23, 2008 regarding Motion of Debtor For Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement. (Docket No. 362).

15. Proceeding Memorandum/Order of Bankruptcy Court dated June 23, 2008 regarding Motion of Debtor for Order Pursuant to Sections 105, 362, and 363 of The Bankruptcy Code Authorizing Debtor to Honor Certain of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established for the Benefit of The Trusts. (Docket No. 363).

16. Order Granting Motion (A) Pursuant To Section 365 of The Bankruptcy Code, Federal Rules of Bankruptcy Procedure 6006 and 9014 Authorizing The Debtor to Reject Certain Contracts With The First Marblehead Corporation and (B) Pursuant to Section 363 of The Bankruptcy Code Authorizing The Debtor To Enter Into A Transition Services Agreement. (Docket No. 364).

17. June 20, 2008 Transcript of Hearing on: (#238) Debtor's Motion For Order (A) Pursuant to §365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to §363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement; (#239) Debtor's Motion For Order Pursuant to §§1056, 362, and 363 of The Bankruptcy Code Authorizing Debtor To Honor Certain Of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash In Certain Pledged Accounts Established For The Benefit of The Trusts; (#342) Joinder of U.S. Bank To Relief Requested. Before The Honorable Henry J. Boroff, J.U.S.B.C. (Docket No. 795).

18. Debtor's Motion For Order Pursuant To Section 1121(d) of The Bankruptcy Code Extending Debtor's Exclusive Period Within Which To File and Solicit Acceptances of Reorganization Plan. (Docket No. 408).

19. Debtor's Motion For (I) Amended Order Pursuant to Section 365(a) of the Bankruptcy Code Approving the Rejection of an Unexpired Real Property Lease and (II) Approval of a Letter Agreement with The First Marblehead Corporation. (Docket No. 595).

20. Proceeding Memorandum/Order of Bankruptcy Court dated November 18, 2008 regarding Motion of Debtor to Amend Order Dated 10/21/2008 Granting Motion of Debtor for Order Pursuant to Section 365(a) of the Bankruptcy Code Approving the Rejection of an Unexpired Real Property Lease to Approve a Letter of Agreement with The First Marblehead Corporation. (Docket No. 617).

21. Motion For Order Estimating Guaranty Claims. (Docket No. 618).

22. Order Granting Debtor's Motion of Debtor For Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code Authorizing the Debtor to Enter into a Transition Services Agreement. (Docket No. 627).

23. Motion For Order Authorizing Debtor To Enter Into Stipulation For The Termination Of Certain Of The Debtor's Student Loan Programs and Settlement of Certain Claims Relating Thereto. (Docket No. 748).

24. Order Granting Motion Authorizing Debtor To Enter Into Stipulation For The Termination Of Certain Of The Debtor's Student Loan Programs and Settlement of Certain Claims Relating Thereto. (Docket No. 773).

25. Motion For Order Authorizing Debtor To Enter Into Stipulation For The Termination Of Certain Student Loan Programs and Settlement of Certain Claims Relating Thereto. (Docket No. 791).

26. Order Granting Motion For Order Authorizing Debtor To Enter Into Stipulation For The Termination Of Certain Student Loan Programs and Settlement of Certain Claims Relating Thereto. (Docket No. 804).

27. Joint Plan of Reorganization of the Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 891).

28. First Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 924).

29. Disclosure Statement for First Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 925).

30. Motion for an Order (A) Approving the Disclosure Statement, (B) Temporarily Allowing Claims for Voting Purposes, (C) Establishing Procedures for Confirmation of the Plan, (D) Establishing Plan Solicitation and Voting Procedures and (E) Approving Forms of Notices and Ballots. (Docket No. 930).

31. Joint Motion For Order Authorizing Debtor, AMBAC Assurance Corporation, The Official Committee of Unsecured Creditors and U.S. Bank National Association (Solely in its Capacity as Indenture Trustee Under The Indentures Identified Below) To Enter Into Stipulation For The Termination of Certain Loan Guarantees and Settlement of Certain Claims Relating Thereto, Determining The Form and Sufficiency of Notice of this Motion and Scheduling the Determination of this Motion, and any Hearing on This Motion, on or before December 22, 2009. (Docket No. 934).

32. Order with regards to Joint Motion For Order Authorizing Debtor, AMBAC Assurance Corporation, The Official Committee of Unsecured Creditors and U.S. Bank National Association (Solely in its Capacity as Indenture Trustee Under The Indentures Identified Below) To Enter Into Stipulation For The Termination of Certain Loan Guarantees and Settlement of Certain Claims Relating Thereto, Determining The Form and Sufficiency of Notice of this Motion and Scheduling the Determination of this Motion, and any Hearing on This Motion, on or before December 22, 2009. (Docket No. 936).

33. Objection Of First Marblehead Education Resources, Inc. and The First Marblehead Corporation To (I) The Disclosure Statement For First Amended Joint Plan Of Reorganization Of The Education Resources Institute, Inc. And The Official Committee Of Unsecured Creditors And (II) The Motion For An Order (A) Approving The Disclosure Statement, (B) Temporarily Allowing Claims For Voting Purposes, (C) Establishing Procedures For Confirmation Of The Plan, (D) Establishing Plan Solicitation And Voting Procedures And (E) Approving Forms And Notices And Ballots. (Docket No. 973).

34. Second Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 979).

35. Disclosure Statement For Second Amended Joint Plan of Reorganization Filed by The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 981).

36. Proceeding Memorandum/Order of the Bankruptcy Court dated February 10, 2010 regarding Motion of the Debtor and the Creditors Committee for Approval of Amended Disclosure Statement for the Second Amended Plan of Reorganization. (Docket No. 992).

37. Third Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee Of Unsecured Creditors. (Docket No. 998).

38. Disclosure Statement for Third Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1000).

39. Notice of Filing Disclosure Statement for Third Amended Joint Plan. (Docket No. 1001).

40. Objection Of First Marblehead Education Resources, Inc. and The First Marblehead Corporation To (I) The Disclosure Statement For Third Amended Joint Plan of Reorganization of The Education Resources, Inc. and The Official Committee Of Unsecured Creditors and (II) The Motion For An Order (A) Approving The Disclosure Statement, (B) Temporarily Allowing Claims For Voting Purposes, (C) Establishing Procedures For Confirmation Of The Plan, (D) Establishing Plan Solicitation And Voting Procedures And (E) Approving Forms And Notices and Ballots. (Docket No. 1004).

41. Limited Objection of Ambac Assurance Corporation to Disclosure Statement for Third Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 1005).

42. Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 1011).

43. Notice of Filing of Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 1012).

44. Disclosure Statement For Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 1013).

45. Notice of Filing Disclosure Statement For Fourth Amended Joint Plan. (Docket No. 1014).

46. Amended Exhibit A to Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors. (Docket No. 1015).

47. Order (A) Approving The Disclosure Statement, (B) Temporarily Allowing Claims for Voting Purposes, (C) Establishing Procedures for Confirmation of the Plan, (D)



Establishing Plan Solicitation and Voting Procedures and (E) Approving Forms of Notice and Ballots. (Docket No. 1023).

48. Emergency Motion Requesting Approval Of An Agreement for Tolling of Statute of Limitations By and Between The First Marblehead Corporation and The Debtor. (Docket No. 1036).

49. Motion For Emergency Determination of Agreement Tolling Statute of Limitations. (Docket No. 1037).

50. Endorsed Order dated April 6, 2010 Granting Motion For Emergency Determination of Agreement Tolling Statute of Limitations. (Docket No. 1038).

51. Order on Emergency Motion Requesting Approval Of An Agreement for Tolling of Statute of Limitations By and Between The First Marblehead Corporation and The Debtor. (Docket No. 1039).

52. Motion of Debtor for Order Approving Rejection of Certain Executory Contracts Pursuant to Section 365 of The Bankruptcy Code. (Docket No. 1045).

53. Motion of Debtor, The Education Resources Institute, Inc., For Order Authorizing Debtor to Reject and Terminate Executory Contracts. (Docket No. 1046).

54. Notice of Filing the Plan Supplement to the Fourth Amended Joint Plan of Reorganization of the Education Resources Institute, Inc. (Docket No. 1047).

55. Joint Motion For Order Authorizing Debtor, RBS Citizens, N.A. and The Official Committee of Unsecured Creditors To Enter Into Stipulation For The Settlement of Guaranty Claims Relating To The Termination of Certain Loan Guarantees (RBS Citizens, N.A.) (Docket No. 1066).

56. Notice of Filing Remaining Plan Supplement Documents to the Fourth Amended Joint Plan of Reorganization of the Education Resources Institute, Inc. (Docket No. 1075).

57. Objection of Nellie Mae Education Foundation, Inc. To Confirmation Of Fourth Amended Joint Plan Of Reorganization. (Docket No. 1079).

58. Memorandum In Support of Confirmation of the Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1082).

59. Affidavit of James A. Peko Relative To Confirmation Of The Fourth Amended Joint Plan Of Reorganization Of The Education Resources Institute, Inc. And The Official Committee Of Unsecured Creditors (Docket No. 1083).

60. Affidavit of Alan D. Blair Relative To Confirmation Of The Fourth Amended Joint Plan Of Reorganization Of The Education Resources Institute, Inc. And The Official Committee Of Unsecured Creditors. (Docket No. 1084).

61. Affidavit of Amy W. Bizar In Support Of The Memorandum In Support of Confirmation of the Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1085).

62. Affidavit of Mark A. Renzi Relative to Confirmation of the Fourth Amended Joint Plan of Reorganization of the Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1087).

63. Exhibit (For Confirmation Hearing) 2009 Form 10-K Annual Report filed by The First Marblehead Corporation (Re: Amended Plan). (Docket No. 1088).

64. Declaration of Jane Sullivan On Behalf of Epiq Bankruptcy Solutions, LLC Regarding Voting on, and Tabulation of, Ballots Accepting and Rejecting Fourth Amended Joint Plan of Reorganization of the Educational Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1089).

65. Supplemental Memorandum in Response to the Objection of Nellie Mae Education Foundation, Inc. to Confirmation of the Fourth Amended Joint Plan of Reorganization. (Docket No. 1090).

66. Transcript of Teleconference Hearing On: Hearing on Confirmation Of Fourth Amended Joint Plan of Reorganization; Debtor's Motion For Order Approving Rejection of Certain Executory Contracts; Debtor's Motion For Order Authorizing Debtor To Reject And

Terminate Executory Contracts; Joint Motion For Order Authorizing Debtor, RBS Citizens, N.A., and The Creditors' Committee To Enter Into Stipulation For The Settlement of Guaranty Claims Relating To The Termination of Certain Loan Guarantees. (Docket No. 1096).

67. Transcript of Teleconference Hearing On: Hearing on Confirmation Of Fourth Amended Joint Plan of Reorganization; Debtor's Motion For Order Approving Rejection of Certain Executory Contracts; Debtor's Motion For Order Authorizing Debtor To Reject And Terminate Executory Contracts; Joint Motion For Order Authorizing Debtor, RBS Citizens, N.A., and The Creditors' Committee To Enter Into Stipulation For The Settlement of Guaranty Claims Relating To The Termination of Certain Loan Guarantees. (Docket No. 1097).

68. Joint Motion Of The Education Resources Institute, Inc., And The Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant To 11 U.S.C. § 1127 And Plan Section 14.4. (Docket No. 1103).

69. Modified Fourth Amended Joint Plan Reorganization of The Education Resources Institute, Inc., And The Official Committee of Unsecured Creditors. (Docket No. 1104).

70. Motion To Approve Stipulation of Acceptance of Plan by TCF National Bank. (Docket No. 1106).

71. Objection of Nellie Mae Education Foundation, Inc. to Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4 and Limited Objection of Nellie Mae Education Foundation, Inc. to the Proposed Confirmation Order. (Docket No. 1114).

72. Objection To Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4 and Request For Entry of an Order Confirming The Plan Without Modification As Soon As Practicable. (Docket No. 1115).

73. Objection of AMBAC Assurance Corporation to the Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4. (Docket No. 1116).

74. Objection of U.S. Bank National Association as Indenture Trustee to the Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4. (Docket No. 1117).

75. Joint Motion For Order Authorizing Debtor, RBS Citizens, N.A., and The Official Committee of Unsecured Creditors to Enter Into and Perform Amended Stipulation for The Settlement of Guaranty Claims relating to the Termination of Certain Loan Guarantees (RBS Citizens, N.A.). (Docket No. 1120).

76. Plan Proponents' Reply to Objections to Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4. (Docket No. 1126).

77. Limited Reply of The First Marblehead Education Corporation and First Marblehead Education Resources, Inc. To Plan Proponents' Reply To Objections To Joint Motion of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4. (Docket No. 1127).

78. Transcript of Telephonic Hearing on: Status Conference; Joint Motion of Debtor and Creditors' Committee to Modify Fourth Amended Plan of Reorganization; Motion of TCF National Bank to Approve Stipulation of Acceptance of Plan; Joint Motion for Order Authorizing Debtor, RBS Citizens, N.A., and Creditors' Committee to Enter Into and Perform Amended Stipulation for the Settlement of Guaranty Claims Relating to the Termination of certain Loan Guarantees. (Docket No. 1129).

79. Second Joint Motion of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4 and for Relief from July 12, 2010 Rulings. (Docket No. 1134).

80. Motion for Expedited Determination of Procedural Aspects of Second Joint Motion of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan Section 14.4 and for Relief from July 12, 2010 Rulings. (Docket No. 1135).

81. Notice of Filing The Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors as of August 26, 2010 (Docket No. 1139).

82. Order Authorizing Plan Proponents to Proceed With Second Joint Motion of Plan Proponents to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. § 1127 and Plan § 14.4, Approving Disclosure, Establishing Procedure to Permit Eligible Creditors to Change Their Votes and Scheduling Confirmation Hearing. (Docket No. 1141).

83. Fourth and Final Application of Craig and Macauley Professional Corporation For Allowance of Fees and Expenses As Special Conflict Counsel To The Debtor. (Docket No. 1144).

84. Joint Motion For Order Authorizing and Approving Stipulation Resolving Claims of First Marblehead Education Resources Inc., The First Marblehead Corporation and First Marblehead Data Services, Inc. (Docket No. 1151).

85. Joint Motion For Expedited Determination of Joint Motion to Authorize and Approve Stipulation Resolving Claims of First Marblehead Education Resources, Inc., The First Marblehead Corporation, and First Marblehead Data Services, Inc. (Docket No. 1152).

86. Objection of Nellie Mae Education Foundation, Inc. to the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1154).

87. Supplemental Memorandum In Support of Confirmation of the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1156).

88. Supplemental Affidavit of James A. Peko In Support of Confirmation of the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1157).

89. Supplemental Affidavit of Amy W. Bizar In Support of the Supplemental Memorandum In Support of Confirmation of the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1158).

90. Declaration of Jane Sullivan on Behalf of Epiq Bankruptcy Solutions, LLC Regarding Voting On, and Tabulation of, Ballots Accepting and Rejecting Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc., and the Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1159).

91. Notice of Filing Plan Supplement Document to the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and the Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1160).

92. Order Authorizing Debtor, Creditors' Committee, First Marblehead Education Resources, Inc., The First Marblehead Corporation and First Marblehead Data Services, Inc. To Enter Into Stipulation Resolving Claims of First Marblehead Education Resources, Inc., The First Marblehead Corporation and First Marblehead Data Services, Inc. (Docket No. 1162).

93. Transcript of Telephonic Hearing on: Evidentiary Confirmation Hearing on Debtor's Fourth Amended Joint Plan of Reorganization; Fourth and Final Application of Craig and Macauley For Compensation and Expenses as Special Counsel To The Debtor; Joint Motion For Approval And Authorization Of Stipulation Resolving Claims Of First Marblehead Corp. and First Marblehead Data Services, Inc. (Docket No. 1165).

94. Findings of Fact, Conclusions of Law and Order (A) Allowing Second Joint Motion of The Education Resources Institute Inc. and the Official Committee of Unsecured Creditors to Modify Fourth Amended Joint Plan of Reorganization Pursuant to 11 USC 1127 and Plan Section 14.4 and For Relief from the July 12, 2010 Rulings, and (B) Confirming the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute Inc. and the Official Committee of Unsecured Creditors. (Docket No. 1170).

95. Motion For Interpretation of Order. (Docket No. 1171).

96. Request For Emergency Determination and Motion For Extension of Time and Scheduling Order. (Docket No. 1175).

97. Response of Official Committee of Unsecured Creditors to Debtor's Motion For Interpretation of Order. (Docket No. 1176).

98. Debtor's Objection To Request For Emergency Determination and Motion for Extension of Time and Scheduling Order. (Docket No. 1177).

99. Endorsed Order dated November 12, 2010 Granting Request For Emergency Determination and Motion For Extension of Time and Scheduling Order. (Docket No. 1178).

100. Notice of Occurrence of Effective Date of the Modified Fourth Amended Joint Plan of Reorganization of The Education Resources Institute, Inc. and The Official Committee of Unsecured Creditors as of August 26, 2010. (Docket No. 1179).

101. Objection To Motion For Interpretation of Order. (Docket No. 1180).

102. The Education Resources Institute, Inc.'s Request For Emergency Determination and Motion For Leave to File Reply In Support of Motion for Interpretation of Order. (Docket No. 1181).

103. Endorsed Order Dated November 24, 2010 Granting The Education Resources Institute, Inc.'s Request For Emergency Determination and Motion For Leave to File Reply In Support of Motion for Interpretation of Order. (Docket No. 1182).

104. Proceeding Memorandum/Order of the Bankruptcy Court dated November 29, 2010 regarding Motion of Debtor for Interpretation of Order dated June 23, 2008 (Docket No. 1183).

105. Transcript of Hearing on Debtor's Motion for Interpretation of Order Dated June 23, 2008. (Docket No. 1184)

106. Memorandum of Law. (Docket No. 1189).

107. Order. (Docket No. 1190).

108. Proceeding Memorandum/Order of the Bankruptcy Court dated December 15, 2010 regarding Motion of Debtor for Interpretation of Order. (Docket No. 1193).

***First Marblehead Corporation, First Marblehead Education Resources, Inc., and First Marblehead Data Services, Inc. v. The Education Resources Institute, Inc.***  
**Civil Action No. 11-10241 (DPW) (D. Mass)**

109. Notice of Appeal from Bankruptcy Court. Bankruptcy Court case number 08-12540. (Docket No. 1).

110. Procedural Order entered by Judge Douglas P. Woodlock. (Docket No. 2).

111. Appellant's Brief by First Marblehead Corporation, First Marblehead Data Services, Inc., First Marblehead Education Resources, Inc. (Docket No. 3).

112. Addendum re Appellant's Brief, by First Marblehead Corporation, First Marblehead Data Services, Inc., First Marblehead Education Resources, Inc. (Docket No. 5).

113. Appellee's Brief by Education Resources Institute. (Docket No. 10).

114. Corporate Disclosure Statement by Education Resources Institute. (Docket No. 11).

115. Appellant's Reply Brief by First Marblehead Corporation, First Marblehead Data Services, Inc., First Marblehead Education Resources, Inc. (Docket No. 12).

116. Letter/request (non-motion) from Robert S. Frank, Jr., Esq. (Docket No. 14).

117. Transcript of Hearing Re: Bankruptcy Appeal held on June 1, 2011, before Judge Douglas P. Woodlock. (Docket No. 15).



118. Memorandum and Order entered affirming Bankruptcy Court Order of December 14, 2010. (Docket No. 17).

119. Order entered. Judgment for the Appellee against the Appellants. (Docket No. 18).

120. Notice of Appeal as to Judgment by First Marblehead Corporation, First Marblehead Data Services, Inc., First Marblehead Education Resources, Inc. (Docket No. 19).

121. Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re Notice of Appeal. (Docket No. 20).

Respectfully submitted,

/s/ Dennis L. Jenkins

Dennis L. Jenkins (BBO #637065)

John D. Sigel (BBO #461910)

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*Counsel for The First Marblehead Corporation,  
First Marblehead Education Resources, Inc.,  
and First Marblehead Data Services, Inc.*

Dated: January 19, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that the Statement of Issues and Designation of the Record of Appellants The First Marblehead Corporation, First Marblehead Education Resources, Inc., and First Marblehead Data Services, Inc., filed through the ECF system, was sent via electronic mail to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 19th day of January, 2012 and also was served by first class regular mail to:

John P. Fitzgerald  
Assistant U.S. Trustee  
John. W. McCormack Post Office and Court House  
5 Post Office Square, Suite 1000  
Boston, MA 02109-3945

/s/ Dennis L. Jenkins

Dennis L. Jenkins (BBO #637065)  
WILMER CUTLER PICKERING HALE  
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